

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of

Cosat Corporation

Petition For Partial Relief From Current  
Regulatory Treatment of Cosat World  
Systems' Switched Voice, Private Line, and  
Video and Audio Services

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RM-7913

DEC 11 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

REPLY OF PANAMSAT

PanAmSat Corporation ("PanAmSat"), by its attorneys, hereby submits this reply to the opposition of Cosat Corporation ("Cosat") to PanAmSat's petition for reconsideration of the Commission's decision (the "Partial Relief Order") in the above-captioned proceeding.<sup>1</sup>

**BACKGROUND AND SUMMARY**

In its Petition, Cosat sought permission to follow the "streamlined" procedures that apply to tariff filings by non-dominant carriers. The Commission denied Cosat's request as it applied to video (and associated audio) services.<sup>2</sup> The Commission granted Cosat's request as it applied to the balance of Cosat's space segment services, even though it left in place its prior finding that "Cosat is dominant in the provision of Intelsat space segment ... in the United States."<sup>3</sup> PanAmSat demonstrated in its petition for reconsideration that the Commission erred in eliminating the tariff protections it has used historically to guard against dominant carriers abusing their market power.

In response, Cosat has accused PanAmSat of using the "regulatory process to hamstring Cosat," and labeled PanAmSat's objections to the easing of the regulatory oversight of Cosat "baseless." In fact, PanAmSat's objections are well-founded and consistent with the legal justifications for full Title II regulation of Cosat.

<sup>1</sup> PanAmSat filed its petition for reconsideration on September 16, 1996. Cosat, however, did not file its opposition until January 30, 1996. Thus, although PanAmSat technically was required to file its reply within seven days of the date on which oppositions were due, PanAmSat's reply is being filed within seven days of the date on which Cosat actually filed its opposition, plus an additional three days because PanAmSat was served with Cosat's opposition by mail.

<sup>2</sup> Cosat has since filed a petition for further partial relief, once again seeking to have the waiver it requested in this proceeding apply to its video and related audio services. See File No. 12-SAT-ISP-97.

<sup>3</sup> Partial Relief Order ¶ 1.

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## DISCUSSION

### **I. Allowing Comsat To File Tariffs In Accordance With The Commission's "Streamlined" Procedures Inappropriately Anticipates The Outcome Of The On-Going Intelsat Privatization Process.**

In its petition for reconsideration, PanAmSat noted that a process is underway that likely will result in fundamental changes to the structure and operations of Comsat and the intergovernmental organizations ("IGOs") of which it is a member. One of the principle concerns regarding the privatization process has been the need to protect against competitive abuses during the period of transition to a fully competitive market.<sup>4</sup> For that reason, Congress now is considering how it should "normalize" Comsat (*i.e.*, make Comsat more like a normal private company) if full competition emerges. Until this restructuring and normalization process is complete, and in the interim while Comsat retains its privileges and immunities, and retains the superior market access associated with being Intelsat's exclusive service provider in the United States, the Commission should not eliminate regulatory safeguards applicable to Comsat.

In its opposition, Comsat declines to address the substance of PanAmSat's position and, instead, merely complains that PanAmSat has been "insulting to the Commission" because, in Comsat's view, "whether Intelsat is restructured has nothing to do with whether Comsat has market power in the United States."<sup>5</sup> To the contrary, PanAmSat's position is that the Commission cannot know in advance whether and what impact the restructuring of the IGOs and/or legislative changes made by Congress to the structure of Comsat will have on the market. Intelsat's structure has everything to do with Comsat's market power, because Comsat has bottleneck control in the United States over access to the Intelsat system.

### **II. Comsat Has Market Power In The Relevant Markets.**

PanAmSat's petition for reconsideration detailed the ways in which Comsat understated the legal, technical, and financial factors that make undersea cable services an imperfect substitute for Comsat's satellite services. Further, PanAmSat described how Comsat may engage in anticompetitive behavior and thereby handcuff separate systems as they attempt to compete with Comsat. In its opposition Comsat merely

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<sup>4</sup> See, e.g., PanAmSat Opposition to Comsat's Petition (filed Aug. 25, 1994) at 3.

<sup>5</sup> Comsat Opposition at 6.

restates the Commission's conclusions in the Partial Relief Order.<sup>6</sup> Restating these conclusions, however, does not make them so.

First, with regard to undersea cables, there is substantial support for the proposition that they are an imperfect substitute for international satellite services. For instance, the Commission itself has concluded that international satellite providers and undersea cables compete in separate "sub-markets."<sup>7</sup> This conclusion accords with the more recent findings of the GAO and the Department of Justice, which have concluded that Intelsat possesses market power in basic telephone and private-line service between countries that are not well served by fiber optic cables and that, because Intelsat may have overlapping ownership interests with the owners of transoceanic cables, "Intelsat's reduced market share in the markets where it competes with fiber may not necessarily imply that strong price competition has emerged."<sup>8</sup>

The Partial Relief Order required Comsat to make a minimal showing for space segment tariff filings to protect against price discrimination along thin routes.<sup>9</sup> This requirement, however, provides inadequate protection to competitive providers of international space segment services because it does nothing to prevent predatory pricing or other forms of anticompetitive activity. Further, the Commission's response discounts the functional and practical differences between Comsat's satellite services and cable services, which differences effectively segregate the markets served by each.

Comsat's competition from cables is limited by the long-term fixed-price contracts that Comsat has in place. These contracts not only guarantee it a substantial quantity of the current traffic, but also a portion of the major international carriers' future traffic regardless of the price or quality of services offered by potential competitors. In addition, most carriers and administrations prefer to use a mix of satellite and cable facilities for restoration purposes. This factor helps to shelter Comsat from competition from cables. Thus, competition from undersea cables provides an inadequate check on Comsat's market power.

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<sup>6</sup> Comsat Opposition at 3-4.

<sup>7</sup> International Competitive Carrier Policies, 102 F.C.C.2d 812, 838-39 (1985).

<sup>8</sup> GAO Report to the Chairman, Committee on Commerce, House of Representatives, Telecommunications: Competitive Impact of Restructuring the International Satellite Organizations, GAO/RCED-96-204 (July 1996) (the "GAO Report") at 7 & n.11, 36.

<sup>9</sup> Partial Relief Order ¶ 26.

Second, with respect to potential competition from separate systems, Comsat has overstated the extent to which this competition can prevent Comsat from engaging in anticompetitive practices. For example, in its opposition Comsat repeats its assertion that, because it has a 19.1 percent investment in Intelsat, which owns and operates 24 satellites, it has roughly equivalent satellite capacity to PanAmSat, which currently owns and operates four international satellites. Such comparisons do more to confuse the issues than to illuminate them.

The more appropriate comparison is between PanAmSat and Intelsat, which is a cartel comprised of the most dominant telecommunications carriers in the world. Intelsat currently operates 24 satellites in orbit; has plans for two additional spacecraft (net of replacement satellites) within the next three years; holds 31 orbital locations; and has filed with the ITU for many more orbital locations.<sup>10</sup> Thus, for instance, whereas PanAmSat today operates a single IOR satellite, Intelsat has five.<sup>11</sup> Likewise, Intelsat can match PanAmSat's single POR satellite with six of its own.<sup>12</sup> And PanAmSat's two AOR satellites must compete with Intelsat's eleven.<sup>13</sup> All told, Intelsat has in orbit approximately 883 international transponders in 24 prime orbital locations in comparison to PanAmSat's 128 international transponders in only four locations. Given Intelsat's overwhelming facilities advantage in the international FSS market — facilities to which Comsat has exclusive access in the U. S. as the U.S. Signatory — Comsat's claim that it and PanAmSat have "nearly equivalent international satellite resources" stretches the bounds of credulity.

Moreover, Comsat — through Intelsat — enjoys unique advantages when competing with separate systems. For instance, by virtue of its ownership structure, Intelsat has superior access in foreign markets.<sup>14</sup> Comsat attempts to dispute this fact in its opposition, referring to PanAmSat's statement that "national telecommunications authorities have not typically required [PanAmSat] to obtain licenses or regulatory

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<sup>10</sup> GAO Report to the Chairman of the Committee on Commerce, Science, and Transportation, U.S. Senate, Telecommunications: Competition Issues in International Satellite Communications, GAO/RCED-97-1 (Oct. 11, 1996) at 21.

<sup>11</sup> In the IOR, Intelsat operates Intelsat 510, Intelsat 604, Intelsat 602, Intelsat 505, and Intelsat 704.

<sup>12</sup> In the POR, Intelsat operates Intelsat 701, Intelsat 801, Intelsat 702, Intelsat 703, Intelsat 511, and Intelsat 513.

<sup>13</sup> In the AOR, Intelsat operates Intelsat 706, Intelsat 705, Intelsat 502, Intelsat 603, Intelsat 506, Intelsat 601, Intelsat 605, Intelsat 512, Intelsat K, Intelsat 709, and Intelsat 515. Intelsat also operates Intelsat 707 at 1° W.L.

<sup>14</sup> GAO Report at 5-6, 37.

authorizations in order to provide space segment capacity to licensed entities.”<sup>15</sup> The quoted language, however, is off the point. The access problems that PanAmSat experiences in foreign markets are not with respect to serving “licensed entities” — typically the monopoly PTT — but end users, who often are limited by law to taking service from the government-owned dominant carrier.

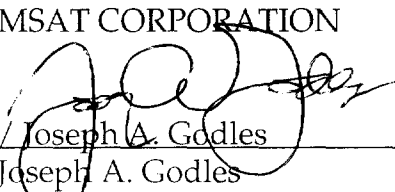
Cosat and Intelsat also enjoy special tax exemptions and immunity from U.S. antitrust laws,<sup>16</sup> Intelsat has easier access to orbital locations,<sup>17</sup> and it controls vast amounts of international public switched traffic by virtue of long-term contracts that were negotiated when Intelsat was the only game in town.<sup>18</sup> In combination with its access to Intelsat’s unmatched orbital resources, these advantages make it essential that the Commission apply dominant carrier tariff filing requirements to Cosat.

#### CONCLUSION

For the reasons stated herein and in its petition for reconsideration, the Commission should reconsider the Partial Relief Order and deny Cosat’s Petition.

Respectfully submitted,

PANAMSAT CORPORATION

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<sup>15</sup> Cosat Opposition at 5.

<sup>16</sup> GAO Report at 5.

<sup>17</sup> Id.

<sup>18</sup> Cosat relies in its opposition on the fact that the Commission’s PSTN restriction has ended. Cosat fails to recognize, however, that separate systems wishing to carry more than 8,000 bearer circuits of PSTN traffic per satellite still will be subject to the full “economic harm” showing required by Article XIV(d) of the Intelsat Agreement. More importantly, Intelsat Signatories control virtually all of the PSTN traffic outside the U.S. and many other countries still forbid competition for PSTN traffic. In short, it will be a long time before separate systems can count on carrying competitively significant amounts of PSTN traffic.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply of PanAmSat was sent by first-class mail, postage prepaid, this 11th day of February, 1997, to each of the following:

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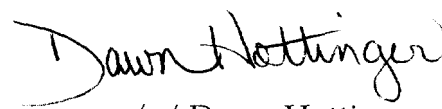
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